No. 12701

In the United States Court of Appeals for the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

LEADBETTER LOGGING & LUMBER COMPANY, RESPONDENT

ON PETITION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

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BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

JURISDICTION

This case is before the Court upon the petition of the National Labor Relations Board pursuant to Section 10 (e) of the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., Supp. III, Secs. 151, *et seq.*), for the enforcement of its order issued against Leadbetter Logging & Lumber Company, respondent herein, on April 19, 1950, and modified on May 18, 1950, following the usual proceedings under Section 10 of the Act, as amended. The Board's decision and order (R. 14–42, 47–53, 55–56)[1] are reported in 89 N. L. R. B. No. 80. This Court

[1] References to portions of the printed record are designated "R." Wherever a semicolon appears, the references preceding the semicolon are to the Board's findings; those following the semicolon are to the supporting evidence.

has jurisdiction of the proceeding under Section 10 (e) of the Act, as amended, the unfair labor practices having occurred in Oswego, Oregon, within this judicial circuit.[2]

STATEMENT OF THE CASE

I. The Board's findings of fact

A. Respondent's discrimination against Employee Cool

1. *Cool's employment record prior to December 1947*

Respondent purchased the Oswego boom from the Reconstruction Finance Corporation in February 1947 (R. 17; 187, 191). At the time it assumed the operation, Respondent retained the crew then employed, including Robert Irwin Cool. Cool had been employed on the boom by its various operators since 1941, but had left the boom at some unspecified time (R. 17; 72, 119, 120, 187). In 1946 he was rehired on the recommendation of Foreman Hedrick,[3] and continued to work at the boom until December 1947, when he voluntarily quit (R. 17; 72, 91–92).

There is no dispute that Cool was a satisfactory boomman throughout the period of his employment with respondent and its predecessors (R. 17; 70–71, 75–76, 95, 139, 151–152). At the hearing before the

[2] Respondent, an Oregon Corporation, is engaged in logging and lumber operations in the State of Oregon, including a boom operation at Oswego, Oregon, which is involved in this proceeding (R. 16; 5, 10, 63–64). A boom is an operation at which logs received by rail are unloaded and placed into a stream and made up into rafts for towing to their final destination (R. 16; 67). No jurisdictional issue is presented since respondent admits that it is engaged in commerce within the meaning of the Act (R. 61–62).

[3] Roy T. Hedrick, foreman of the Oswego boom since 1944, was in direct charge of the Oswego boom under Transportation Supervisor Kerry (R. 17; 68, 189).

Board, the head rafter, to whom Cool was directly responsible, described him as "a good workman" (R. 154). Foreman Hedrick admitted that Cool could perform any job on the operation with the possible exception of running a donkey engine (R. 17; 70–71, 76), and respondent conceded that Cool was competent (R. 17; 139).

2. *Cool's Union activities as job steward*

During the period of Cool's employment with respondent, a collective bargaining agreement was in effect between the Company and the International Woodworkers of America, Local Union 11–81, CIO, hereinafter called the Union (R. 18; 102–104). In February 1947, Cool was elected job steward, and as such was charged with the presentation of grievances to the Company (R. 19; 76, 108–109, 115, 122–123). The contract between the Company and the Union expressly provided for the initial settlement of grievances by the steward and the foreman (R. 104–105). In accordance with established practice, the grievances were taken up with the foreman during working hours (R. 90, 110–111, 115, 159–160, 172, 182). Cool, as steward, handled many grievances on behalf of the employees, but in doing so, he incurred the displeasure of Foreman Hedrick.

Thus, one day in July 1947, Cool disputed Foreman Hedrick's right to assign employees to "bull cooking" (maintenance work) on the skids or rollway. In the operation of the Oswego boom, logs are unloaded from railroad cars and then rolled into the water on skids where they are made up into rafts

(R. 21; 67, 128). From time to time it is necessary to repair the skids due to wear and tear (R. 166). Cool and another committeeman testified at the hearing that there was an understanding between the Union and respondent, however, that there should be no maintenance work on days when 50 or more cars of logs were to be handled (R. 23; 127, 128–129, 147–148). Cool, believing that Hedrick had violated this agreement on the day in question, registered a protest (R. 23; 125–126, 159, 196). Hedrick first ignored Cool's protest,[4] but after calling the Company's office "to find out what was what," he directed the men to stop the work, in accordance with Cool's request (R. 22; 83, 126–127).

Shortly thereafter, the "steel incident" arose. Foreman Hedrick called some men from the raft to move some steel or railroad iron. The men complained about doing this type of work "because it was not boom work and it was ruining their calked shoes,"[5] and requested Cool and Brazeau, another member of the Union job committee, "to stop it" (R. 24–25; 196–198). Job Steward Cool and other committeemen going to the scene were met by Hedrick who told them that the men would have to continue moving the steel (R. 24; 165). Having protested to Hedrick, Cool and Brazeau left. Hedrick

[4] Hedrick, denying the existence of the agreement at that time, stated that the policy was instituted immediately after the incident, and added that in any event he did not consider himself bound by it because he did not personally make it (R. 23; 85, 87, 169, 184–185).

[5] Calked shoes are a type of safety shoe, costing about $30, worn by men who work on floating timber (R. 25; 179, 197).

then told the boommen to stop moving the steel and return to the raft (R. 24; 165).

At about this same period, Cool on one occasion left the job for an hour and a half to see the Union's business agent (R. 25–26; 88, 132, 174). During Cool's absence, Hedrick assigned two men to move a boathouse for an adjoining landowner (R. 26; 89, 132). Upon his return, Cool protested this assignment as being work outside the Union contract and a violation of the State's insurance laws (R. 26; 88–89, 132, 140–141). Hedrick conceded at the hearing that this job "was a separate job from that of the Leadbetter Company" (R. 89).

On another occasion, Cool and Hedrick engaged in "quite a heated discussion" on a matter of seniority (R. 26; 130–131, 140, 159). Cool, "speaking as a representative of the Union," objected to Hedrick's expressed intention to grant greater seniority to a non-Union man than to a Union man who had worked one day longer (*ibid.*). This complaint, like the others already discussed, was made at the request of Cool's fellow Union members (R. 26; 130).

The remaining disputes between Hedrick and Cool were caused by Hedrick's "pike pole pushing," that is, work performed by Hedrick in the rafting of logs during the boom operation (R. 26; 90, 173). The contract between respondent and the Union prohibited performance of actual labor by the foreman (R. 26–27; 110, 124, 173, 182). Hedrick admitted that he "pushed a pike pole" in violation of the contract and that all job stewards previous to, following, and including Cool had stopped him (R. 27; 90, 173,

182). Hedrick testified that "I knew that I was violating our contract, and I would argue with them a little bit, maybe, but it didn't do me a hell of a lot of good" (R. 182).

Foreman Hedrick openly resented Cool's handling of grievances. On one occasion, when Hedrick took one of the men to help fix a broken pipe, he complained, "I suppose Bob [Cool] will come up here now and try to stop us from doing this work. If he does, he is going to get fired, if he does not watch out." (R. 31; 158). On another occasion, when Cool protested Hedrick's determination to extend seniority to a non-Union man over a Union man with longer service (*supra,* p. 5), Hedrick cursed the Union vehemently (R. 159, 176, 183).

3. *Respondent's refusal to reemploy Cool in September 1948*

As already noted (*supra,* p. 2), Cool quit his job in December 1947. During the summer of 1948, Cool applied for reemployment but Hedrick told him that there was no work available (R. 18; 92, 137–138). When a vacancy developed in September 1948, Hedrick, in accordance with established practice, requested the Union to furnish a boom man (R. 18; 92, 111–112, 117, 162). The Union thereupon offered Cool (R. 18; 92, 111, 162). Hedrick, however, refused to hire him (R. 18; 93, 111, 163). Instead, he hired an inexperienced non-Union man to fill the vacancy (R. 18; 99–100, 112–113, 148–149, 178–179).

Following the refusal to hire Cool, the Union, in accordance with its contract, filed a formal grievance (R. 27; 113–114). Thereafter, three meetings were held: first with the foreman, Hedrick, then with the superintendent, Kerry, and, finally, with the job committee (R. 28; 150). At the initial meeting, Hedrick said that Cool was refused the job because he was "incompetent" and a "troublemaker" (R. 28; 113, 148, 150). At the final meeting,[6] however, Hedrick acknowledged that Cool "was competent all right but that he would not do his work" (R. 29; 114, 148). Emphasizing his determination not to rehire Cool, Hedrick stated that either he or Cool "had to step out" (R. 29; 150, 176). Thereupon, respondent's representatives asserted that they "would hire whoever they saw fit," and if the Union was not satisfied, it could file charges (R. 29; 114). Thereafter, the Union filed unfair labor practice charges, alleging respondent's discriminatory refusal to rehire Cool on account of his outstanding activities on behalf of the Union (R. 1–3).

II. The Board's conclusions

On the basis of the foregoing facts and the entire record, the Board concluded (R. 48, 33) that respondent, in violation of Section 8 (a) (3) and (1)

[6] At the final grievance meeting, at which both Hedrick and Cool were present, the Union was represented by its district secretary, Garrison, its business agent, George Willett, and the job committee. Respondent was represented by Superintendent Kerry, and Martin S. Sullivan, its labor relations manager and personnel director (R. 27–28; 65, 113–114).

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of the Act, refused employment to Employee Cool "on or about September 4, 1948, because of his previous conduct in vigorously carrying out his duties as job steward for the Union and in seeking to enforce the terms of the collective bargaining agreement between the Union and the Respondent." In reaching its conclusion, the Board rejected respondent's contentions (*infra,* pp. 12–14), that Cool was refused employment because, in carrying out his duties as job steward, in 1947, he had interfered with the authority of the foreman, was guilty of insubordination and trouble making, and was in other respects an unsatisfactory worker (R. 33).

III. The Board's order

The Board's order requires respondent to cease and desist from discouraging membership in the Union by discrimination in regard to hire and tenure of employment, or any term or condition of employment, and from in like or related manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act. Affirmatively, the order requires respondent to offer Cool reinstatement with back pay; and to post appropriate notices (R. 50–53, 55–56).

QUESTION PRESENTED

Whether substantial evidence supports the Board's finding that respondent, in violation of Section 8 (a) (3) and (1) of the Act, refused to rehire Employee Cool because of his previous Union activities as job steward.

ARGUMENT

Substantial evidence supports the Board's finding that respondent, in violation of Section 8 (a) (3) and (1) of the Act, refused to reemploy Cool because of his previous activities as job steward

We submit that the record well supports the Board's finding (R. 48, 33) that respondent refused to reemploy Cool in September 1948 because of his Union activities as a job steward in his previous employment with respondent.

As already shown (pp. 2–3), in September 1948, Cool had a record of 18 years employment as boomman, the job for which he had applied. His work was concededly satisfactory (R. 17; 70–71, 76, 139, 154). Respondent had retained him in its employ when it acquired the business in January 1947. Foreman Hedrick had recommended him for the job with respondent's predecessor (*supra,* p. 2). Indeed, Hedrick testified that Cool could perform almost any job on the boom (*supra,* p. 3). In these circumstances, it is significant that in filling a vacancy in September 1948, Hedrick completely ignored Cool's qualifications and, instead, hired a new inexperienced employee. Cf. *N. L. R. B.* v. *American Potash & Chemical Corp.,* 98 F. 2d 488, 493–494 (C. A. 9), certiorari denied, 306 U. S. 643; *N. L. R. B.* v. *Moltrup Steel Products Co.,* 121 F. 2d 612, 615 (C. A. 3).

Hedrick's motivating reason for refusing employment to Cool is not difficult to discern. Cool, as job steward, conscientiously enforced the contract with the Company and vigorously processed grievances thereunder. These activities involved disputes with

Foreman Hedrick (R. 107, 137, 158). Cool had a "heated discussion" with him concerning seniority of a Union man over a non-Union man (*supra,* p. 5). He disputed Hedrick's right to perform "pike pole pushing," questioned his assignment of work outside the Union contract, and objected to the performance of maintenance work on certain days (*supra,* pp. 3–6).

Hedrick openly expressed his resentment of these activities. Thus, he told Employee Saulsbury that Cool "is going to get fired, if he does not watch out" (R. 31; 158), and admitted that he might have "cussed" the Union "every day" (R. 176).[7]

There is no question but that the presentation of grievances by Job Steward Cool was a concerted activity protected by the Act. Section 9 (a) of the Act expressly guarantees to "any individual employee or a group of employees" the right "at any time to present grievances to their employer." Accordingly, the courts have repeatedly condemned discrimination practiced against employees because they handle grievance matters. *N. L. R. B.* v. *Waterman Steamship Corp.,* 309 U. S. 206, 223; *N. L. R. B.* v. *Tovrea Packing Co.,* 111 F. 2d 626, 629 (C. A. 9),

[7] Respondent, in attempting to refute the charge of discriminatory motivation in refusing reemployment to Cool, cited the allegedly harmonious relationship between Hedrick and Maher, Cool's predecessor as job steward. Hedrick conceded, however, that "we didn't have so many grievances at that time, about the only grievances that we had was my pushing a pike pole," as to which, he stated, he "would argue" only "a little bit" because "I knew that I was violating our contract" (R. 172, 182). In any event, the protected character of Cool's activity did not hinge upon whether he presented grievances in a manner which Hedrick found pleasing.

certiorari denied, 311 U. S. 668; *N. L. R. B.* v. *Kennametal, Inc.*, 182 F. 2d 817, 819 (C. A. 3); *N. L. R. B.* v. *Gullett Gin Co.*, 179 F. 2d 499, 502 (C. A. 5); *American Steel Foundries* v. *N. L. R. B.*, 158 F. 2d 896, 899 (C. A. 7); *N. L. R. B.* v. *W. C. Bachelder*, 120 F. 2d 574, 578 (C. A. 7), certiorari denied, 314 U. S. 647; *N. L. R. B.* v. *Nelson Mfg. Co.*, 120 F. 2d 444, 446 (C. A. 8). Such conduct is unquestionably a violation of Section 8 (a) (1) because it interferes with, restrains and coerces employees in the exercise of the right to engage in concerted activities for mutual aid or protection. It is also a violation of Section 8 (a) (3) because "such discrimination necessarily discourages union membership—at the very least that of the discharged employees—and therefore such discharge is *ipso facto* a violation of Section 8 (3) [citing cases]," *N. L. R. B.* v. *J. G. Boswell Co.*, 136 F. 2d 585, 596 (C. A. 9). To the same effect, see *N. L. R. B.* v. *Walt Disney Products*, 146 F. 2d 44, 49 (C. A. 9), certiorari denied, 324 U. S. 877; *N. L. R. B.* v. *National Motor Bearing Co.*, 105 F. 2d 652, 658–659 (C. A. 9); *N. L. R. B.* v. *Nelson Mfg. Co.*, 120 F. 2d 444, 446 (C. A. 8); *N. L. R. B.* v. *Brezner Tanning Co.*, 141 F. 2d 62, 64 (C. A. 1).[8]

[8] Respondent's contention that the record here does not in fact disclose any discouragement of union membership on the part of any particular employee is wholly untenable. The "test of interference, restraint and coercion under * * * the Act does not turn * * * on whether the coercion succeeded or failed [citing cases]. The test is whether the employer engaged in conduct which, it may reasonably be said, tends to interfere with the free exercise of employee rights under the Act." *N. L. R. B.* v. *Illinois Tool Works*, 153 F. 2d 811, 814 (C. A. 7). See also, *N. L. R. B.* v. *Donnelly Garment Co.*, 330 U. S. 219, 231; *N. L. R. B.* v. *Link-Belt Co.*, 311 U. S. 584, 588; *N. L. R. B.* v. *Brezner Tanning Co.*, 141 F. 2d 62, 64 (C. A. 1); *N. L. R. B.* v. *John*

It matters not that in pressing grievances, Cool may have mistakenly believed that the Company had violated the terms of the Union contract. In analogous situations involving strike activity, the Supreme Court has stated, "The wisdom or unwisdom of the men, the justification or lack of it, in attributing to respondent an unreasonable or arbitrary attitude" does not deprive a concerted activity of its protected character. *N. L. R. B.* v. *Mackay Radio & Telegraph Co.,* 304 U. S. 333, 344. It is sufficient that "In their minds it was a justified grievance." *Firth Carpet Co.* v. *N. L. R. B.,* 129 F. 2d633, 636 (C. A. 2). The employees here believed in all cases that they had justifiable grievances. The "skid incident" was bottomed on their belief that Hedrick had violated the verbal understanding between the Union and the Company in regard to performance of maintenance work (*supra,* p. 4). The "steel incident" resulted from their view that the movement of steel "was not boom work" (*supra,* p. 4). And the "pike pole pushing" episodes flowed from contractual violations which Foreman Hedrick admitted (*supra,* p. 5).

Before the Board, respondent sought to justify its refusal to reemploy Cool by contending that, in carrying out his duties as job steward, Cool had interfered with authority of the foreman and was guilty of insubordination because he had "stopped" operations, and absented himself from work. In support of its contention respondent cited the "skid incident," the

Engelhorn & Sons, 134 F. 2d 553, 557 (C. A. 3); *N. L. R. B.* v. *Ford Brothers*, 170 F. 2d 735 (C. A. 6); *Joy Silk Mills* v. *N. L. R. B.*, 27 L. R. R. M. 2012 (C. A. D. C.), decided November 21, 1950.

"steel incident," the "pike pole pushing" arguments, and the "raft incident" (*supra,* pp. 3–6).

The Board properly found (R. 33) that the "above-cited causes for * * * [the refusal to rehire] were not the real reason therefor but a mere pretext." Any work stoppage that Cool may have effected was, as the record shows (*supra,* pp. 4–6), momentary and for the sole purpose of protesting respondent's contractual violations then in progress, to prevent their becoming an accomplished fact.[9] According to Foreman Hedrick's own testimony, it was he who directed the actual suspension of the work. Thus, Hedrick testified that he had terminated the maintenance work on the skid or rollway after he had called respondent's office and was "told" to cease this work (R. 83). Similarly, he testified that it was he who "sent the men back off the job" after the steel moving incident "so that they would have * * * [no] trouble with the Local" (R. 165). As to the "pike pole pushing" incidents, Hedrick stated: "I don't know that they stopped, or whether they kept working, I do not think that they stopped, to be honest with you" (R. 182).

Equally without merit is the contention that in processing the grievances, Cool "left his work without authority" and "refused to work" (R. 18–19; 11–12). In the first place, each incident was of short

[9] A work stoppage by employees to present a grievance is a protected concerted activity under the Act. See Sections 7 and 9 (a), and cases cited, *supra*, pp. 10–11, particularly, *N. L. R. B.* v. *Kennametal, Inc.*, 182 F. 2d 817, 819 (C. A. 3); *N. L. R. B.* v. *Tovrea Packing Co.*, 111 F. 2d 626, 629 (C. A. 9); and *Gullett Gin Co.* v. *N. L. R. B.*, 179 F. 2d 499, 502 (C. A. 5).

duration and was promptly settled (*supra,* pp. 3–6). Respondent at no time introduced, or even offered to introduce, evidence showing that Cool's Union activities affected his production. Secondly, it is admitted that it was the custom of the parties to settle grievances during working hours (*supra,* p. 3) and therefore, the parties necessarily contemplated that Cool leave his job for a reasonable period for that purpose.

Apart from absences to handle grievances, respondent also cited Cool's one-and-a-half-hour absence on one occasion to see the Union's business agent (*supra,* p. 5). That this isolated incident was not regarded significant by respondent is evident from Hedrick's own testimony that he merely advised Cool "that he would have to have permission *after that* if he wanted to leave the job" (R. 88). Moreover, it is not disputed that Cool had completed his work before he left that day (R. 132, 140). Hedrick testified that it was the established "policy" of the Company to grant "the men the privilege of going home when their work is done" (R. 170, 184).

It is thus clear that the conduct of Cool which respondent characterizes as "insubordinate" and "interference with the authority of the foreman" (R. 11–12) was no more than the traditional union activity of presenting grievances. Respondent itself did not take a sufficiently serious view of the "incidents" at the time of their occurrence to discharge or discipline Cool. Hedrick not only failed to protest Cool's way of handling grievances to the Union, as he had a right to do, but he did not even report Cool's alleged misconduct to his superiors (R. 20, 23, 26, 31;

108, 110, 160, 181, 194–195). Personnel Director Sullivan testified that he "had never heard" or "had never been told" about the incidents in question, until the grievance negotiations following Hedrick's refusal to rehire Cool, or the hearing of the instant case (R. 28; 195). As in *N. L. R. B.* v. *Electric City Dyeing Co.,* 178 F. 2d 980, 983 (C. A. 3), these incidents "apparently became intolerable only" when the need for a defense appeared.

The "raft incident", the only incident relied upon which was not bottomed on Cool's position as job steward, occurred one day in January 1947, before respondent acquired the Oswego boom, and a year before Cool had quit voluntarily (R. 20; 72, 91–92, 96). On the day in question, Cool was working on the raft, placing logs which were being floated down to form the raft. Foreman Hedrick went on the raft and told Cool to do the work in a different manner (R. 77–78, 133–134). Cool refused and requested Hedrick to leave the raft (*ibid.*). As in the case of the occurrences already discussed, Hedrick did not file a formal grievance against Cool, report the matter to his superiors, or discharge or discipline Cool therefor (R. 26; 77, 97, 134–135, 195). In fact, respondent later retained Cool in its employ when it purchased the boom (*supra,* p. 2). Thus, as in *Peoples Motor Express* v. *N. L. R. B.,* 165 F. 2d 903, 906 (C. A. 4), "there is real significance" in respondent's election "to revive an ancient (and apparently forgotten) complaint, and make it serve as the proffered excuse or reason" for the refusal to rehire.

On the entire record, the Board's conclusion (R. 48) that respondent's refusal to reemploy Cool

was motivated by his Union activities as job steward is reasonable. Cool's prompt and vigorous grievance activities, Foreman Hedrick's open resentment of such activities, Cool's admittedly satisfactory work, the fact that respondent filled the existing vacancy with a new and inexperienced employee, and the remoteness and inadequacy of respondent's purported reasons for refusing Cool employment amply support this conclusion.[10]

CONCLUSION

It is respectfully submitted that the Board's findings are supported by substantial evidence on the record considered as a whole, that its order is valid and proper in all respects, and that a decree should issue enforcing the Board's order in full.

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[10] Respondent's discriminatory refusal to hire Cool was the same in legal effect as an outright discharge of Cool in violation of Section 8 (a) (3) and (1). See, *Phelps Dodge Corp.* v. *N. L. R. B.*, 313 U. S. 177, 182–187; *N. L. R. B.* v. *Security Warehouse & Cold Storage Co.*, 136 F. 2d 829, 834 (C. A. 9); *N. L. R. B.* v. *Waumbec Mills, Inc.*, 114 F. 2d 226, 233–234 (C. A. 1); *N. L. R. B.* v. *Milan Shirt Manufacturing Co.*, 125 F. 2d 376 (C. A. 6).

APPENDIX

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C. Supp. III, Secs. 151, *et seq.*), are as follows:

SEC. 2. When used in this Act—

* * * * *

(5) The term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

* * * * *

RIGHTS OF EMPLOYEES

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8 (a) (3).

UNFAIR LABOR PRACTICES

SEC. 8. (a) It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 7:

* * * * *

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization:

* * * * *

REPRESENTATIVES AND ELECTIONS

SEC. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided,* That any individual employee or a group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective bargaining contract or agreement then in effect: *Provided further,* That the bargaining representative has been given opportunity to be present at such adjustment.

* * * * *

PREVENTION OF UNFAIR LABOR PRACTICES

SEC. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practices (listed in Section 8) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise. * * *

(c) * * * If upon the preponderance of the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall

state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. * * *

(e) The Board shall have power to petition any circuit court of appeals of the United States * * * within any circuit * * * wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceedings, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent, or agency, shall be considered by the Court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive. * * *

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